

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

\_\_\_\_\_  
UNION LEADER  
CORPORATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT  
OF HOMELAND SECURITY,  
U.S. IMMIGRATION AND  
CUSTOMS ENFORCEMENT  
\_\_\_\_\_

Civil No.

**COMPLAINT**

1. This action is brought pursuant to the provisions of the Freedom of Information Act, 5.U.S.C.S. 552 (2011), (hereinafter "FOIA"), for injunctive and other appropriate relief in the nature of mandamus, seeking the release of agency records requested by Union Leader Corporation, (hereinafter "Union Leader"), from the United States Department of Homeland Security, United States Immigration and Customs Enforcement.

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this action, and personal jurisdiction over the parties, pursuant to the provisions of 5 U.S.C.S. (a)(4)(B)(2011). Venue is proper in this district under the provisions of 5 U.S.C. 552(a)(4)(B)(2011).

**PARTIES**

3. The plaintiff, Union Leader, is a corporation organized and existing under the laws of the State of New Hampshire. Union Leader is a publisher of newspapers

of general circulation, and other media, throughout the State of New Hampshire, and elsewhere.

4. The defendant, United States Department of Homeland Security, (hereinafter “DHS”), is an agency established in the Executive Branch of the United States Government. The U.S. Immigration and Customs Enforcement, (hereinafter “ICE”), is an investigative arm of DHS that was created by merger of the U.S. Customs Service and the Immigration and Naturalization Service in 2003. DHS is an agency within the meaning of 5 U.S.C. 552(f)(1)(2011).

### **FACTS**

5. On September 29, 2011, ICE issued a press release detailing the arrests of 2,901 individuals as part of ICE’s operation “Cross Check”. A copy of the press release is attached hereto as Exhibit 1.
6. On or about October 12, 2011, Paul Feely, a reporter representing Union Leader, requested from ICE the names and addresses of six (6) individuals who had been arrested in New Hampshire during 2011. The individuals that were the subject of Union Leader’s request were described in a written communication issued by ICE on October 13, 2011, as follows:
  - male, 32, from Mexico, arrested in New Hampshire; convicted of DUI and assault; still in ICE custody;
  - male, 31 from Dominican Republic, arrested in New Hampshire, convicted of assault and shoplifting; still in ICE custody;
  - male, 63, from Bolivia, arrested as a fugitive in New Hampshire; convicted of trespassing; still in ICE custody;
  - male 23, from Columbia, arrested in New Hampshire; convicted of cocaine possession; still in ICE custody;

- male, 42, from Mexico, arrested as a fugitive in New Hampshire for illegal entry; still in ICE custody;
- male, 36, from Dominican Republic, arrested in New Hampshire; convicted of selling cocaine;

A copy of ICE's written communication is attached hereto as Exhibit 2.

7. ICE has possession of the documents that Union Leader seeks.
8. On February 29, 2012, Union Leader, through counsel, sent a Freedom of Information Act Request by certified mail, email, and facsimile transmittal to the ICE Freedom of Information Act Office, requesting records responsive to the Union Leaders previous requests for same. A copy of Union Leader's FOIA Request is attached hereto as Exhibit 3.
9. On March 9, 2012, ICE responded to Union Leader's FOIA Request by sending copies of six form I-213 "Record of Deportable/Inadmissable Alien".
10. ICE's response redacted the names and addresses of the individuals, claiming that that information was exempt under sections (b) 6, 7(C), and 7(E) of FOIA. A copy of ICE's response is attached hereto as Exhibit 4.
11. On March 14, 2012, Union Leader, through counsel, submitted an Appeal to ICE's response referenced in paragraphs 12 and 13 above, by certified mail, and via email, to both the ICE office of Principal Legal Advisor, and the Associate General Counsel for the Department of Homeland Security. A copy of Union Leader's Appeal is attached hereto as Exhibit 5.
12. On March 28, 2012, ICE denied Union Leader's Appeal and stated that the "application of (b)(6) and (b)(7)(C) to withhold third party names or other

identifying information was proper in all respects.” A copy of ICE’s decision is attached hereto as Exhibit 6.

13. Union Leader has exhausted its administrative remedies.

14. Union Leader has a right of access to the requested information under 5 U.S.C. 552(a)(3), and there is no valid legal basis for ICE’s denial of such access. None of the exemptions to disclosure contained in the relevant law are applicable to the instant fact pattern.

15. ICE’s claim that the names and addresses of persons arrested and detained by the government are exempt from disclosure as an unwarranted invasion of personal privacy is patently absurd.

WHEREFORE, the Union Leader respectfully requests that this Honorable Court:

1. schedule an expedited hearing of this matter as provided for in 28 U.S.C. 1657;
2. Order ICE to provide access to the requested documents;
3. award Union Leader costs and reasonable attorneys’ fees in this action, as provided in 5 U.S.C. 552(a)(4)(E); and
4. grant such other and further relief as this Court deems just and proper.

Respectfully submitted,  
Union Leader Corporation,  
by its attorney,

/s/ Gregory V. Sullivan  
GREGORY V. SULLIVAN  
N.H. Bar # 2471

Malloy & Sullivan,  
Lawyers Professional Corporation  
78 West Merrimack Street  
Manchester, NH 03101  
(603)668-3737  
[g.sullivan@att.net](mailto:g.sullivan@att.net)

DATED: April 4, 2012

